

SJR

|

USE COMMITTEE REPORT

5/18/91

(7)
Date Referred: April 26, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5-17-91

The STATE AFFAIRS Committee considered:

SJR 1

SENATE JOINT RESOLUTION NO. 1

RIGHT TO KEEP AND BEAR ARMS

Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms.

RECOMMENDATIONS:

be replaced with H.C.S. SJR 1 (HSTA)

[x] the same title
[] a new title

[] have attached amendments(s)

[x] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[x] fiscal note(s) ^{Senate} Division of Elections 3-6-91

[] zero fiscal note _____

[x] zero fiscal note(s) ^{Senate} Law 3-6-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>E. Bruckman</i>	-				
<i>X P. Grunberg</i>	-				
<i>T. Moyer</i>	✓				
<i>V. Choquette</i>	✓				
<i>Gene Kubera</i>	✓				

Gene Kubera
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Version: SJR1

(S) Publish Date: 3/6/91

Revision Date: 01/29/91 Department Affected: OFFICE OF THE GOVERNOR - ELECTIONS

Title: Amendment to Constitution BRU: Elections

Right to keep and Bear Arms Component: II - Primary and General Elections

Sponsor: Senator Rodev

Requestor: Judiciary COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		2.2*				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2.2*				

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		2.2*				
FEDERAL FUNDS						
OTHER						
TOTAL		2.2*				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Election Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared By: Linda Edgeworth, Information Officer Phone: 465-4611
Division: Division of Elections Date: 01/29/91

Approved by Commissioner: Charles E. Hickson
Agency: Division of Elections Date: 1-29-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 2

'II Version: STR1

(S) Publish Date: 3/6/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "...amendment to the Constitution..." BRU: Prosecution
 relating to the...right to keep & bear arms." Component: Criminal Justice Litigation
 Sponsor: Senator Rodey
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

			8	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 4, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 4, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 1

Senate Joint Resolution No. 1 would place a ballot proposition before the voters at the next general election to amend Article 1, Section 19, of the state's constitution, regarding the right to bear arms. Because the purpose of the resolution is to place a constitutional amendment proposal before the voters, adoption of the resolution by itself will not have a fiscal impact on the Department of Law.

Eventual voter adoption of the amendment might lead to a fiscal impact at some future date; however, determination of such a possible impact, at this time, is speculative at best. No one can predict the full legal effect of the proposed constitutional amendment with any degree of certainty, but there is a possibility that adoption of the proposed amendment would invalidate existing state laws regulating firearms. These include laws relating to concealed weapons and the possession of guns by felons. They also include laws that prohibit possession of certain weapons such as switchblades, fully automatic weapons or sawed-off shotguns, possessing firearms while intoxicated, and removing a firearm's serial number.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 24, 1991

SUBJECT: Amendment to SJR 1

TO: Senator Sam Cotten

FROM: Jack Chenoweth
Legislative Counsel

When it comes before the Senate on reconsideration, you intend to offer an amendment to Senate Joint Resolution 1. SJR 1 would revise article I, section 19, Alaska Constitution, to declare that "the right to keep and bear arms may not be denied or infringed." The amendment you contemplate would place "unreasonably" before "denied," thereby modifying the concluding provisions of that section.

You have asked me to review the Alaska Supreme Court's interpretation of the term "unreasonably" (or its analog "reasonably") and to relate what conclusions those decisions might have with respect to the amendment you may propose.

In my judgment, while an analysis of the court's interpretation of the term "unreasonably" in earlier cases provides only limited guidance, it does indicate a sense of the court's thinking. The court's decisions conclude as follows:

(1) "unreasonableness" is not amenable to a single definition, and whether conduct by government officials was or was not reasonable will depend on the facts and circumstances giving rise to the question litigated;

(2) at least in the context of application of constitutional provision providing protection in the case of search and seizure, government conduct is "unreasonable" if it is conduct that constitutes an unwarranted intrusion or an arbitrary intrusion or invasion of personal privacy.

"Unreasonable" is used in article I, section 14 of the Alaska Constitution, in the following context:

SEARCHES AND SEIZURES. The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .

Under the state constitution's search and seizure provision, the court has spelled out what it understands to constitute "[un]reasonableness." It has concluded and consistently stated that the test of whether governmental conduct was allegedly "unreasonable" must be determined on a case basis, taking into consideration the specific facts and circumstances of the case. Ellison v. State, 383 P.2d 716, 719 (Alaska 1963). See Merrill v. State, 423 P.2d 686, 699 (Alaska 1967), cert. den. 316 U.S. 1040, 87 S.Ct. 1497, 18 L.Ed.2d 607 (1967); Weltz v. State, 438 P.2d 502, 505 - 507 (Alaska 1967); Sleziak v. State, 454 P.2d 252, 260, cert. den. 396 U.S. 921, 90 S.Ct. 252, 24 L.Ed.2d 202 (1969); Ferguson v. State, 488 P.2d 1032, 1037 (Alaska 1971). In other words, there is no single interpretation of the word "unreasonable" that would be dispositive in all situations.

In the Weltz decision, cited above, the court, called upon to ascertain whether a note used as evidence has been obtained by an illegal search and seizure in violation of the Fourth Amendment of the United States Constitution and article I, section 14 of the Alaska constitution, determined that it was not. As the basis for its conclusion, the court explained that

The primary purpose of these constitutional provisions [i.e. the federal and Alaska constitutional provisions relating to unreasonable search and seizure] is the protection of "personal privacy against unwarranted intrusion by the State." Although not determinative of the issue, we note that under either [one of two competing] version[s], no arbitrary intrusion or invasion of . . . privacy . . . occurred.

431 P.2d at 506, 507 (emphasis added). Thus, implicit in a working definition of conduct that is "unreasonable" is this element: at least in the context of evaluating assertions that searches and seizures are unconstitutional, government conduct is unreasonable if that conduct constitutes either an "unwarranted intrusion" or an "arbitrary intrusion or invasion" of personal privacy.

If article I, section 19 is amended by insertion of a reference to "unreasonably" and the court is later called upon to interpret and apply that section, I think it is likely that the court would base its analysis on the discussions set out and conclusions reached in these earlier decisions.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 12, 1991

SUBJECT: SJR 1, right to keep and bear arms
TO: Senator Sam Cotten
FROM: Jack Chenoweth
Legislative Counsel

Insertion of "unreasonably" as a modifier before "denied or infringed" in this joint resolution would place into article I, section 2 an explicit justification for the legislature to regulate by law some situations that involve the possession and handling of arms. If, as I noted in my earlier memo, there is authority elsewhere in the state constitution to regulate arms under the state's general police power, the justification provided by the insertion of "unreasonably" would complement that authority. If there is not, this justification would then be the sole source of the legislature's ability to concern itself with such circumstances as concealed weapons, definition of crimes or sentences for offenses involving use of weapons, and the like.

The test of reasonableness is already operative as to several rights enumerated in article I. "Reasonableness" is explicit in the context of the right provided under article I, section 14 to be secure against unreasonable searches and seizures and is implicit in the court's decisions taken under article I, section 22 that construe and apply the right of privacy.

Based on the use of the term in article I, section 14, presumably the court's test of reasonableness would consider whether the government purpose in regulating possession and bearing of arms would be justifiable.

JBC:lmb
91-111.lmb

7-LS0212G
Chenoweth
5/17/91

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 1 (STATE AFFAIRS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS RODEY, Fischer, Halford, Sturgulewski, Shultz, Frank, Menard, Jones

REPRESENTATIVE Zawacki

A RESOLUTION

**1 Proposing an amendment to the Constitution of the State of Alaska relating to the
2 individual right to keep and bear arms.**

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, sec. 19, Constitution of the State of Alaska, is amended to read:

**5 SECTION 19. RIGHT TO KEEP AND BEAR ARMS. A well-regulated militia being
6 necessary to the security of a free state, the right of the people to keep and bear arms shall not
7 be denied. The individual right to keep and bear arms shall not be unreasonably infringed
8 by the State or a political subdivision of the State.**

**9 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state
10 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
11 the election laws of the state.**

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
801 WEST 10TH STREET
P.O. BOX F
JUNEAU, ALASKA 99811-0500

POSITION PAPER

SJR 1

Proposing an Amendment to the Constitution...
Relating to the Individual Right to Keep and Bear Arms

The Department of Education opposes SJR 1 as it is presently written because it would prevent the state and its political subdivisions from exercising control governing the right of students and others to possess firearms on school grounds. This action has been taken in at least one community in Alaska. The Anchorage Municipal Assembly banned guns from schools because of two incidents where students brought loaded hand guns onto school grounds. We believe it is absolutely essential that the state and communities continue to have the authority to prohibit firearms on school grounds to assure the safety of teachers and students.

Therefore, the Board and Department of Education oppose the present language of SJR 1, and recommends that passage be opposed unless the state and municipalities be assured the right to regulate, at the least, the possession of firearms on school grounds.

4-23-91

Date

Steve Hole

Steve Hole, Acting Commissioner



Alaska State Legislature

MAR 16 1992

Please enter into the record my testimony to the House State Affairs
committee name

committee on SJR 7, dated 3-16-92
bill/subject

I AM A national gun rights activist. My activities have been subject to news services from Anch. Daily News through Time, CNN, UPI, API, and international short wave.

DO NOT TAMPER THE ORIGINAL RODEY Bill.
Your language in this bill is OUTRAGEOUS

I OFFER US public law 101-647 and the gun free school zone as of 11-29-90. Now being enforced.

I also offer that the federal gov't is taking our rights slowly but surely ~~and~~ you by passing the "unreasonable" wording justified Fed. Un-constitutional infingements

Signed: Macl Ghyson
Testifier CANDIDATE FOR NRA BOARD OF DIRECTOR

GUN OWNERS OF AMERICA, No Compromise Majority

Representing (Optional)
2140 Wolverine Cir Wasilla, Ak 99654

Address
376-8285

Phone No.



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

April 19, 1991

The Honorable Mike Navarre
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

 FAX TRANSMITTAL MEMO
 TO: Mike Navarre - Linda
 DEPT: _____ FAX #: 465-4937
 FROM: Chief Ross PHONE: 283-7879
 CO: Kenai PD FAX #: 283-3014
 Post-It brand fax transmittal memo 7671

NO. OF PAGES
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Dear Representative Navarre:

I am requesting your support in amending HJR 1, or SJR 1 should they come to the House floor for a vote. While I do not believe the Constitution needs to be changed, I can understand why proponents of HJR 1 want to clarify the right of the individual versus the collective right in the constitution. The amended HJR 1 would read as follows:

"The individual right to keep and bear arms shall not be unreasonably denied or infringed by the State or a political subdivision of the state."

The proposed amendment would hopefully protect our present firearms regulatory statutes from successful challenge if the Constitution were to be changed. I have heard no complaint, even from the strongest proponent of HJR 1/SJR 1, that our present State Statutes are onerous or unduly interfere with the rights of the individual.

If the resolutions are passed without amendment, it is questionable whether present statutes (possession while intoxicated, possession on a licensed premises, carrying concealed weapon, etc.) will be found constitutional. In any case it would cause considerable expense and unnecessary litigation on each statute.

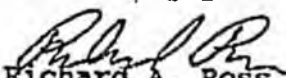
Insertion of the word unreasonably puts this Constitutional protection on the same level as that of the right to be secure from unreasonable services and seizures. The burden will still be on the government to show that firearms regulations are not unreasonable. However, it would not result in an insurmountable burden that cannot be overcome in the interest of public safety.

HJR 1
April 19, 1991
Page 2

I would request that you resist the local pre-emption argument of some advocates. If adopted this could become a two-edged sword. If the State were to pre-empt all local firearms regulations, the ultimate loser could be small communities and rural areas. As the needs of Anchorage, Fairbanks, and Juneau are dictated in the future, so would State Statute because of their political power. These attempts to resolve their local problems would become State law and broadly apply to areas without the problems they are trying to address.

Your consideration of these thoughts and support for an amended HJR 1 and SJR 1 is appreciated.

Very truly yours,


Richard A. Ross
Chief

RAR/elr



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: May 17, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
 HJR 1 - Relating to Right to Keep and Bear Arms
 SJR 1 - Relating to Right to Keep and Bear Arms

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
RICHARD L. BURTON	Public Safety	P.O. Box N JUNEAU	99811		415-4322	<input checked="" type="radio"/> Y <input type="radio"/> N	HJR-1 SJR-1
DICK BISHOP	AK Outdoor Council	POB 34077 JUNEAU	99803		463-3830	<input checked="" type="radio"/> Y <input type="radio"/> N	SJR 1
DEAN GUARIZI	Dept. of LAW	P.O. Box KC JUNEAU	99811		465-3428	<input checked="" type="radio"/> Y <input type="radio"/> N	SJR-1
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: May 17, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

HB 251 - Relating to Debt Retirement Fund

HB 252 - Relating to Approp: Debt Retirement Fund

SB 44 - Relating to Construction and Operation

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Jeff Morrison	DMVA	P.O. Box L Juneau 99811			465-4600	Y (N)	SB 44
Paula Scavers	Leg Research	P.O. Box V			465-3991	Y (N)	SB 44
Harlow Knudson	Hospital Nursing	House 314 E.eward St			5-1790	(Y) N	SB 44
SHELBY STASTNY	OMB	Box AM			5-3568	(Y) N	HB 251/252
JACK KREINHEIDER	OMB	" "			"	(Y) N	HB 251/252
MILVA KOLLE	D.O. Ad.	Box C				(Y) N	HB 251
T.C. CARROLL	DMVA	P.O. Box L Juneau 99811			465-4600	(Y) N	SB 44 / STR 1
JEFF BUSH	Dept of Law	P.O. Box K, Juneau	99811		465-3600	(Y) N	HB 308
						Y N	
						Y N	
						Y N	